

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
BRYSON CITY DIVISION**

CIVIL CASE NO. 2:12cv07

PENNSYLVANIA NATIONAL MUTUAL)	
CASUALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
LC JONES, JR., BLACK BEAR PAVING, LLC,)	
and L.C. & BRANDON TWO, LLC,)	
Defendants.)	
<hr/>)

ORDER OF DISMISSAL

THIS MATTER is before the Court on the Defendants' Motion to Dismiss [Doc. 10].

Pursuant to 28 U.S.C. § 636(b) and the Standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell was designated to consider this Motion and to submit recommendations for its disposition.

On August 27, 2012, the Magistrate Judge filed a Memorandum and Recommendation in which he recommended granting the Defendants' Motion to Dismiss and dismissing this action without prejudice. [Doc. 16]. The parties were advised that any objections to the Magistrate Judge's

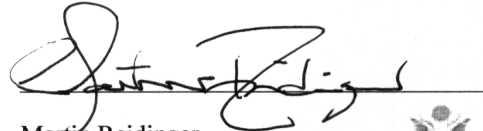
conclusions and recommendations were to be filed in writing within fourteen days of service of the Recommendation and that failure to file objections to the Memorandum and Recommendation would preclude the parties from raising any objection on appeal. [Id., at 15]. The period within which to file objections expired on September 13, 2012. No objections to the Memorandum and Recommendation have been filed by any party.

On the same date that the Defendants moved to dismiss, they filed Answer and Counterclaim. [Doc. 12]. The Defendants' Motion to Dismiss is based on a lack of subject matter jurisdiction. The Magistrate Judge recommended dismissing the action in its entirety because this Court lacks subject matter jurisdiction over the matter in controversy. [Doc. 16 at 15]. That recommendation of necessity included the dismissal of the Defendants' Counterclaim. [Id.]. The Defendants did not file any objection to that recommendation.

Having conducted a careful review, the Court concludes that the Magistrate Judge's recommendation is supported by the facts of record and the law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation and grants the Defendants Motion to Dismiss.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Dismiss is hereby **GRANTED** and this action, including the Defendants' Counterclaim, is hereby **DISMISSED** without prejudice.

Signed: September 22, 2012



Martin Reidinger
United States District Judge

